



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

20.1.8

OCTOBER 18, 2023

EFFECTIVE DATE

(10-18-2023)

PURPOSE

- (1) This transmits revised IRM 20.1.8, Penalty Handbook, Employee Plans and Exempt Organization Miscellaneous Civil Penalties.

MATERIAL CHANGES

- (1) IRM 20.1.8.1.5, Terms and Acronyms - added acronyms.
- (2) IRM 20.1.8.1.6, Related Resources - added link.
- (3) IRM 20.1.8.3.1, IRC 527(j) - Failure to Disclose Certain Information by Political Organizations - added citation.
- (4) IRM 20.1.8.3.2.1, IRC 6652(c)(1) - Annual Returns Under Section 6033(a)(1) or 6012(a)(6) - clarified effective date.
- (5) IRM 20.1.8.3.2.1, IRC 6652(c)(1) - Annual Returns Under Section 6033(a)(1) or 6012(a)(6) - inflation adjustments per Rev. Proc. 2022-38.
- (6) IRM 20.1.8.3.2.1, IRC 6652(c)(1) - Annual Returns Under Section 6033(a)(1) or 6012(a)(6) - corrected citation.
- (7) IRM 20.1.8.3.2.1, IRC 6652(c)(1) - Annual Returns Under Section 6033(a)(1) or 6012(a)(6) - deleted transition relief.
- (8) IRM 20.1.8.3.2.2, IRC 6652(c)(2) - Returns Under Section 6034 or 6043(b) - inflation adjustments per Rev. Proc. 2022-38.
- (9) IRM 20.1.8.3.2.3, IRC 6652(c)(3) - Disclosure Under Section 6033(a)(2) - added citation.
- (10) IRM 20.1.8.3.2.3, IRC 6652(c)(3) - Disclosure Under Section 6033(a)(2) - inflation adjustments per Rev. Proc. 2022-38.
- (11) IRM 20.1.8.3.2.4, IRC 6652(c)(4) – Failure to Submit Notice of Intent to Operate as IRC 501(c)(4) Organization Under IRC 506 - added authority.
- (12) IRM 20.1.8.3.3, IRC 6684 - Assessable Penalties With Respect to Liability for Tax Under Chapter 42 - added citation.
- (13) IRM 20.1.8.3.8, IRC 6720 – Fraudulent Acknowledgements With Respect to Donations of Motor Vehicles, Boats, and Airplanes - clarified citations.
- (14) IRM 20.1.8.4.2.1, IRC 6652(d)(1) - Registration - correct penalty amount.
- (15) IRM 20.1.8.4.3, IRC 6652(e) - Information Required in Connection With Certain Plans of Deferred Compensation, Etc. - update to account for the new Information Returns Intake System (IRIS).
- (16) IRM 20.1.8.4.3, IRC 6652(e) - Information Required in Connection With Certain Plans of Deferred Compensation, Etc. - added form.

- (17) Exhibit 20.1.8-1, IRC 6058(a) - Plans Filing Requirements - qualified citations.
- (18) Exhibit 20.1.8-2, IRC 6058(a) - Plans Exempt From Filing - added citation.

EFFECT ON OTHER DOCUMENTS

This material supersedes IRM 20.1.8, dated October 6, 2022.

AUDIENCE

All operating divisions and functions that work with penalties associated with employee plans and exempt organizations.

Nicole Young Scott
Acting Director, Business Support Office
Small Business/Self-Employed

20.1.8

Employee Plans and Exempt Organizations Miscellaneous Civil Penalties

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- 20.1.8-1 IRC 6058(a) - Plans Filing Requirements
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- 20.1.8-3 EO AND EP REASONABLE CAUSE GUIDELINES
- 20.1.8-4 Penalty Reference Numbers (PRNs) for EO and EP Penalties

20.1.8.1
(10-06-2022)
Program Scope and Objectives

- (1) **Purpose:** The purpose of this IRM section is to cover policy as set by the Office of Servicewide Penalties as it relates to the miscellaneous civil penalty provisions of the Internal Revenue Code (IRC) that apply to Exempt Organizations (EO) and Employee Plans (EP).
- (2) **Audience:** All operating division employees and processing functions who address EO and EP penalties.
- (3) **Policy Owner:** The Business Support Office (BSO) is under Operations Support (OS). SB/SE is responsible for overseeing civil penalties, including EO and EP penalties.
- (4) **Program Owner:** The Office of Servicewide Penalties (OSP) is responsible for EO and EP penalty policy.
- (5) **Contact Information:** To recommend changes or make any other suggestions to this IRM, email OSP at *Servicewide Penalties Team. Also see IRM 1.11.6.5, Providing Feedback About an IRM Section - Outside of Clearance.

20.1.8.1.1
(04-26-2018)
Background

- (1) EO and EP penalties are important tools for IRS enforcement. In addition, penalties provide the Service with an important tool to achieve that goal because they enhance voluntary compliance by taxpayers. See IRM 1.2.1.12.1, Policy Statement 20–1 (Formerly P-1-18), Penalties are used to enhance voluntary compliance.

20.1.8.1.2
(12-03-2020)
Authority

- (1) IRC 527 – political organizations.
- (2) IRC 6404 – abatements.
- (3) IRC 6501 – limitations on assessment and collection.
- (4) IRC 6651 – failure to file tax return or to pay tax.
- (5) IRC 6652 – failure to file certain information returns, registration statements, etc.
- (6) IRC 6654 – failure by individual to pay estimated income tax.
- (7) IRC 6655 – failure by corporation to pay estimated income tax.
- (8) IRC 6662 – imposition of accuracy-related penalty on underpayments.
- (9) IRC 6663 – imposition of fraud penalty.
- (10) IRC 6664 – definitions and special rules.
- (11) IRC 6684 – assessable penalties with respect to liability for tax under chapter 42.
- (12) IRC 6685 – assessable penalty with respect to public inspection requirements for certain tax exempt organizations.
- (13) IRC 6690 – fraudulent statement or failure to furnish statement to plan participant.
- (14) IRC 6692 – failure to file actuarial report.

- (15) IRC 6693 – failure to provide reports on certain tax-favored accounts or annuities; penalties relating to designated nondeductible contributions.
- (16) IRC 6704 – failure to keep records necessary to meet reporting requirements under IRC 6047(d).
- (17) IRC 6710 – failure to disclose that contributions are nondeductible.
- (18) IRC 6711 – failure by tax exempt organization to disclose that certain information or service available from federal government.
- (19) IRC 6714 – failure to meet disclosure requirements applicable to quid pro quo contributions.
- (20) IRC 6720 – fraudulent acknowledgements with respect to donations of motor vehicles, boats, and airplanes.
- (21) IRC 6751 – procedural requirements.

20.1.8.1.3
(04-26-2018)
Responsibilities

- (1) The Director, Business Support, is the director responsible for the servicewide civil penalty program.
- (2) Overall responsibility for civil penalty programs is assigned to OSP. OSP is a matrix organization residing in the Business Support (Small Business/Self Employed) Function. OSP is charged with coordinating policy and procedures concerning the administration of civil penalty programs, ensuring consistency with the penalty policy statement, reviewing and analyzing penalty information, researching penalty effectiveness on compliance trends, and determining appropriate action necessary to promote voluntary compliance.
- (3) Each IRS organization is responsible for establishing an internal process for managing their procedures based upon these Servicewide policies and may develop additional guidance or reference materials for their specific functional administrative needs. However, such reference material must receive approval from OSP prior to distribution and must remain consistent with the policies and general procedural requirements set forth in this IRM, Policy Statement 20-1 (e.g., Penalty Policy Statement) in IRM 1.2.1.12.1, Policy Statement 20-1, (Formerly P-1-18), Penalties are used to enhance voluntary compliance, and any other guidance relating to civil penalties.
- (4) All employees should keep the following objectives in mind when handling each penalty case:
 - a. Similar cases and similarly-situated taxpayers should be treated alike.
 - b. Each taxpayer should have the opportunity to have his or her interests heard and considered.
 - c. Strive to make a right decision in the first instance. A wrong decision, even though eventually corrected, has a negative impact on voluntary compliance.
 - d. Provide adequate opportunity for incorrect decisions to be corrected.
 - e. Treat each case in an impartial and honest way (i.e., approach the job, not from the government's or the taxpayer's perspective, but in the interest of fair and impartial enforcement of the tax laws).
 - f. Use each penalty case as an opportunity to educate the taxpayer, help the taxpayer understand his or her legal obligations and rights, assist the

taxpayer in understanding his or her appeal rights, and in all cases, observe the taxpayer's procedural rights.

- g. Endeavor to promptly process and resolve each taxpayer's case.
- h. Resolve each penalty case in a manner which promotes voluntary compliance.

20.1.8.1.4 (04-26-2018) Program Management and Review

- (1) Every function in the IRS has a role in proper penalty administration. It is essential that each function conducts its operations with an emphasis on promoting voluntary compliance. Appropriate reviews should be conducted to ensure consistency with the penalty policy statement (Policy Statement 20-1) and philosophy.
- (2) To promote the goal of consistency and fairness, OSP will review semi-annually a sample of penalty assessments, provided by SB/SE Research. See IRM 20.3.1, Civil Penalty Accuracy Review Process. The report of findings is shared with the Director, Business Support, the CFO, and other leadership as needed. The completed report is uploaded to an enterprise shared folder. Reports may be prepared when a significant issue develops, such as a correction to programming that affects many taxpayers.

20.1.8.1.5 (10-18-2023) Terms and Acronyms

- (1) The table below is a list of terms and acronyms used in this IRM.

Acronym	Definition
A2A	Application to Application
ABLE	Achieving a Better Life Experience Act
BMF	Business Master File
BSO	Business Support Office
CP	Computer Paragraph
EO	Exempt Organization
EP	Employee Plans
ERISA	Employee Retirement Income Security Act
FIRE	File Information Returns Electronically
FUTA	Federal Unemployment Tax Act
IRA	Individual Retirement Account
IRIS	Information Returns Intake System
IDRS	Integrated Data Retrieval System
IPU	SERP IRM Procedural Update
IRC	Internal Revenue Code

Acronym	Definition
IRM	Internal Revenue Manual
MFT	Master File Tax
OAR	Operations Assistance Request
OSP	Office of Servicewide Penalties
PBGC	Pension Benefit Guaranty Corporation
PL	Public Law
PRN	Penalty Reference Number
PTA	Parent Teacher Association
SEP	Simplified Employee Pension
SIMPLE	Savings Incentive Match Plans for Employees of Small Employers
SSA	Social Security Administration
SSN	Social Security Number
TC	Transaction Code
TEGE	Tax Exempt and Government Entities
UBIT	Unrelated Business Income Tax

20.1.8.1.6
(10-18-2023)

Related Resources

(1) Additional forms and resources include:

- a. Form 8278 – Assessment and Abatement of Miscellaneous Civil Penalties.
- b. The Internal Revenue Code (IRC) provides taxpayers specific rights. The Taxpayer Bill of Rights groups these rights into ten fundamental rights. See IRC 7803(a)(3). IRS employees are responsible for being familiar with and following these rights. For additional information about your taxpayer rights, please see Pub 1, Your Rights as a Taxpayer or visit irs.gov/taxpayer-bill-of-rights.
- c. Taxpayers have the right to receive assistance from the Taxpayer Advocate Service (TAS) if they are experiencing financial difficulty or if the IRS has not resolved their tax issues properly and timely through normal channels. Refer taxpayers to TAS when the contact meets TAS criteria (see IRM 13.1.7, Taxpayer Advocate Service (TAS) Case Criteria), or when Form 911, Request for Taxpayer Advocate Service Assistance (and Application for Taxpayer Assistance Order), is attached and steps cannot be taken to resolve the taxpayer's issue the same day. "Same day" includes cases that can be resolved in 24 hours, as well as cases where steps can be taken within 24 hours to begin resolving the issue. See IRM 13.1.7.6, Same Day Resolution by Operations. When making a TAS referral, use Form 911 and forward to TAS in accordance with your local procedures.

- d. TAS uses Form 12412, Taxpayer Advocate Service Operations Assistance Request, to initiate the Operations Assistance Request (OAR) process of referring a case to the W&I Division, to affect the resolution of the taxpayer's problem. For more detailed information, please refer to IRM 13.1.19, Advocating With Operations Assistance Requests (OARs).

20.1.8.2 (04-26-2018) **Supervisory Approval for Penalty Assessment**

- (1) IRC 6751(b)(1) states, in general, that no penalty under the IRC shall be assessed unless the **initial** determination of such assessment is personally approved (in writing) by the immediate supervisor of the individual making such determination or such higher-level official as the Secretary may designate. At this time, the Secretary has not designated any higher-level official to approve initial determinations.

Note: See IRM 20.1.1.2.3.1, Timing of Supervisory Approval, for information related to the timing of supervisory approval.

- (2) The following penalties are excluded from this supervisory approval:
 - a. Penalties assessed under IRC 6651 (Failure to File/Failure to Pay), IRC 6654 (Failure by Individual to Pay Estimated Income Tax), and IRC 6655 (Failure by Corporation to Pay Estimated Income Tax) are excluded from this requirement.
- Note:** Supervisory approval is required for fraudulent failure to file under IRC 6651(f).
- b. Any other penalty automatically calculated through electronic means is also excluded from this requirement. For additional information on supervisory approval for penalty assessments, see IRM 20.1.1.2.3, Approval Prerequisite to Penalty Assessments.
 - (3) Form 8278, Assessment and Abatement of Miscellaneous Civil Penalties, requires that both the originator and supervisor sign and date the form. If the Form 8278 is not signed by both the supervisor and the originator, the form and associated case file should be returned to the sender using Form 3210, Document Transmittal, procedures. Expedited handling is required for imminent statute cases.

20.1.8.2.1 (04-26-2018) **Common Features**

- (1) In general, each penalty discussed in this chapter is unique and will stand alone unless otherwise indicated. Exceptions and additional information are noted in the discussions of the specific penalties; however some general procedures apply.
- (2) **Statute of Limitations:** In general, the additions to tax, additional amounts, and assessable penalties are assessed, collected, and paid in the same manner as taxes. To the extent such an item pertains to a tax return, the assessment is subject to the statute of limitation per IRC 6501, Limitations on Assessment and Collection (generally, three years from the later of the due date (unextended) or the filing of the return).
- (3) **Reasonable Cause:** Determination as to whether or not reasonable cause exists must be based on careful consideration of the facts and circumstances

of each case prior to the assertion of a penalty. Examiners should consider any reason a taxpayer provides in conjunction with the guidelines, principles, and evaluating factors identified in IRM 20.1.1.3.2, Reasonable Cause, and IRM 20.1.8, Penalty Handbook, Employee Plans and Exempt Organization Miscellaneous Civil Penalties.

- (4) **Abatements:** Information on penalty abatements is provided in IRM 20.1.1.3, Criteria for Relief from Penalties.
- (5) Penalty reference numbers (PRN) are used to assess non-tax return related penalties (conduct or information returns).
 - a. Generally, the “500” series penalty reference numbers are assigned to penalties for computer-matching programs and are used to identify a failure to comply. They are usually asserted by the Campus and Field functions (via Form 8278).
 - b. Generally, the “600” series penalty reference numbers are assigned to penalties as the result of an examination or other compliance activity. They are usually asserted by area examination.
 - c. See Document 6209, IRS Processing Codes and Information, or Form 8278, Assessment and Abatement of Miscellaneous Civil Penalties, for a complete list of the current penalty reference numbers.
- (6) Other civil penalties common to EP/EO returns are discussed in the following handbooks:
 - a. IRM 20.1.1, Introduction and Penalty Relief
 - b. IRM 20.1.2, Failure to File and Failure to Pay
 - c. IRM 20.1.3, Estimated Tax Penalty
 - d. IRM 20.1.4, Failure to Deposit
 - e. IRM 20.1.5, Return Related Penalties
 - f. IRM 20.1.6, Preparer/Promoter/Material Advisor Penalties
 - g. IRM 20.1.7, Information Return Penalties
 - h. IRM 20.1.10, Miscellaneous Penalties
 - i. IRM 20.1.11, Excise Tax and Estate and Gift Tax Penalties

20.1.8.2.2
(10-06-2022)

**Failure to File and
Failure to Pay
Provisions**

- (1) When a delinquent income, employment, or excise tax return is received from an entity during an examination or if the delinquent return is never received, the TEGE employee will determine whether the failure to file and/or failure to pay penalties under IRC 6651(a)(1), IRC 6651(a)(2), and IRC 6652(a)(3) should be asserted. See IRM 20.1.2, Failure to File/Failure to Pay. The excise tax returns required to be filed in connection with employee plans and exempt organizations are:
 - a. Form 5330, Return of Excise Taxes Related to Employee Benefit Plans
 - b. Form 4720, Return of Certain Excise Taxes on Charities and Other Persons Under Chapters 41 and 42 of the IRC
 - c. Form 990 PF, Return of Private Foundation or Section 4947(a)(1) Nonexempt Charitable Trust Treated as a Private Foundation
 - d. Form 730, Monthly Tax Return for Wagers
 - e. Form 720, Quarterly Federal Excise Tax Return
 - f. Form 5329, Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts
- (2) The income tax returns required of certain exempt organizations and trusts are:

- a. Form 990 T, Exempt Organization Business Income Tax Return
- b. Form 1041, U.S. Income Tax Return for Estates and Trusts
- c. Form 1120 POL, U.S. Income Tax Return for Certain Political Organizations

(3) The employment tax returns required of certain exempt organizations are:

- a. Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return
- b. Form 941, Employer's Quarterly Federal Tax Return
- c. Form 944, Employer's Annual Federal Tax Return
- d. Form 945, Annual Return of Withheld Federal Income Tax

(4) There is no statutory prohibition against asserting the fraud penalty under IRC 6663 and the fraudulent failure to file penalty under IRC 6651(f) for the same

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20.1.2.3.7.5, Fraudulent Failure to File-IRC 6651(f).

20.1.8.2.3
(04-26-2018)
IRC 6662 - Imposition of Accuracy-Related Penalty on Underpayments Relating to Substantial Overstatements of Pension Liabilities

- (1) IRC 6662(a) imposes a penalty equal to 20 percent of certain underpayments. IRC 6662(b)(4) and IRC 6662(f) apply to underpayments attributable to deductions for employer contributions to a defined benefit plan or retirement annuity plan where such deductions are based on a substantial overstatement of pension liabilities.

20.1.8.2.3.1
(10-06-2022)
Accuracy-Related Penalty Assertion

- (1) In general there is an overstatement of pension liabilities if the actuarial determination of pension liabilities taken for deduction purposes, under IRC 404(a)(1) or IRC 404(a)(2), exceeds the amount determined to be the correct amount of such liability. **A substantial overstatement occurs when the actuarial determination of the liabilities taken into account for purposes of computing the deduction under IRC 404(a)(1) or IRC 404(a)(2) is 200 percent or more of the amount determined to be the correct amount (400 percent or more in the case of a gross valuation misstatement, IRC 6662(h)(2)(B)).** The IRS has determined that deductions are to be disallowed when liabilities are overstated for purposes not reasonably based on the facts and circumstances. For example:

- a. Valuation of liabilities based on unreasonable actuarial assumptions, or
- b. Valuation of accelerated deductions in a manner inconsistent with IRC 412 regulations (relating to acceptable funding methods), or
- c. Taking benefits in excess of those permitted under IRC 415.

- (2) **Due Date** - The accuracy-related penalty applies to an underpayment of tax reported on a return regardless of whether the return is timely. The penalty does not apply, however, to substitutes for return filed under IRC 6020(b).

- (3) **Penalty Computation** -The penalty under IRC 6662(a) is computed by multiplying the underpayment of tax attributable to the substantial overstatement of pension liabilities by 20 percent, and 40 percent in the case of a gross valuation misstatement (IRC 6662(h)).
- No penalty is imposed under IRC 6662(b)(4) unless the portion of the underpayment for the taxable year attributable to the substantial overstatement of pension liabilities exceeds \$1,000. See IRC 6662(f)(2).
 - The penalty under IRC 6662(a) for any substantial overstatement of pension liabilities is identified by the EP specialist.

20.1.8.2.3.2
(10-06-2022)
Penalty Relief

- IRC 6664(c) provides penalty relief for IRC 6662 violations with respect to any portion of the underpayment if it can be shown that there was a reasonable cause for such portion and the taxpayer acted in good faith with respect to such portion. If the taxpayer can substantiate reasonable cause and good faith, the penalty should not be asserted.
- See IRM 20.1.5.7.1, Reasonable Cause, for a discussion of reasonable cause penalty relief. See IRM 20.1.5.7, Penalty Relief, for a discussion of penalty relief.

20.1.8.2.4
(04-26-2018)
How to Assess and Abate - Employee Benefit Plan Procedures

- Penalties relating to employee benefit plan forms are assessed as follows:
 - Penalty adjustment case files associated with income tax forms are forwarded via Form 3210, Document Transmittal, to the servicing campus Receipt and Control function. The case file and related source documents should be accompanied by Form 5734, Non-Master File Assessment Voucher;
 - Penalties not associated with income tax forms are forwarded via Form 3210 to the servicing campus Receipt and Control function. Form 8278, Assessment and Abatement of Miscellaneous Civil Penalties, should be kept with the relevant source documents.

Reminder: Ensure that the most current form is used with the appropriate IRC sections and penalty reference numbers indicated.

20.1.8.3
(10-06-2022)
Exempt Organizations and Certain Trusts

- Organizations exempt from federal income tax are organized and operated for one or more of the purposes designated in IRC 501. Examples include:
 - Charitable
 - Religious
 - Scientific
 - Educational
 - Not-for-profit membership organizations
 - Business leagues
 - Certain cooperative organizations
- Under IRC 6033 and IRC 6043(b) most exempt organizations are required to file one of the following:
 - Form 990, Return of Organization Exempt from Income Tax
 - Form 990 PF, Return of Private Foundation or IRC 4947(a)(1) Nonexempt Charitable Trust Treated as a Private Foundation

- c. Form 990 EZ, Short Form Return of Organization Exempt from Income Tax
 - d. Form 990 N, e-Postcard
- (3) The following IRC sections contain relevant information impacting the tax treatment of exempt organizations and certain trusts when considering penalty application:
- a. IRC 527(j)(1), Penalty for Failure [to make required disclosures or to include required information]
 - b. IRC 6652(c), Returns by Exempt Organizations and by Certain Trusts, Public Law 109-222 enacted IRC 4965 and amended IRC 6652(c)(3), IRC 6033(a)(2), and IRC 6011(g) effective for taxable years ending after May 17, 2006
 - c. IRC 6684, Assessable Penalties with Respect to Liability for Tax Under Chapter 42
 - d. IRC 6685, Assessable Penalty With Respect to Public Inspection Requirements For Certain Tax Exempt Organizations
 - e. IRC 6710, Failure to Disclose that Contributions are Nondeductible
 - f. IRC 6711, Failure by Tax Exempt Organization to Disclose that Certain Information or Service Available from Federal Government
 - g. IRC 6714, Failure to Meet Disclosure Requirements Applicable to Quid Pro Quo Contributions
 - h. IRC 6720, Fraudulent Acknowledgements with Respect to Donations of Motor Vehicles, Boats, and Airplanes
- (4) Certain trusts are required to file Form 1041-A, U.S. Information Return Trust Accumulation of Charitable Amounts, or Form 5227, Split-Interest Trust Information Return.

20.1.8.3.1
(10-18-2023)
IRC 527(j) - Failure to Disclose Certain Information by Political Organizations

- (1) A political organization (except those described in IRC 527(j)(5), Coordination With Other Requirements) that accepts a contribution or makes an expenditure for an exempt function during any calendar year shall file a disclosure with the Secretary.
- (2) IRC 527(j)(2) requires that such disclosure be made in semiannual, quarterly, or monthly reports.
- (3) The applicable disclosure form is Form 8872, Political Organization Report of Contributions and Expenditures.
 - a. Prior to the Taxpayer First Act (P.L. 116-25), IRC 527(j)(7) required Form 8872, Political Organization Report of Contributions and Expenditures, to be filed electronically by organizations having contributions or expenditures exceeding certain amounts. The Taxpayer First Act (P.L. 116-25) amended IRC 527(j)(7) to expand required electronic filing to all political organizations subject to IRC 527(j).
 - b. The expanded electronic filing requirement is effective for periods beginning after December 31, 2019.
 - c. Form 8872 reports filed on paper for periods beginning after December 31, 2019 will not be accepted.

- (4) IRC 527(j)(1) imposes a penalty for each failure equal to the highest rate of tax specified in IRC 11(b) multiplied by the amount to which the failure relates. It imposes a penalty on:
 - a. A failure to make the required disclosures under IRC 527(j)(2) at the prescribed time frame and manner, or
 - b. A failure to include any of the information required to be shown by such disclosures or to show the correct information.
- (5) The amount imposed shall be assessed and collected in the same manner as penalties imposed by IRC 6652(c).
 - a. Assessed using PRN 662.
- (6) IRC 527(l) provides that the Secretary may waive all or any portion of the:
 - a. Tax assessed for the failure to comply with IRC 527(i) (requirement to notify the IRS of operating as a IRC 527 organization), or
 - b. Amount imposed under IRC 527(j) for a failure to comply.

Note: (6)(a), (6)(b) - applicable provided that such failure was due to reasonable cause and not due to willful neglect. See Rev. Proc. 2007-27.
- (7) The request for “penalty relief” due to reasonable cause must be made in the form of a written statement providing all the facts to substantiate reasonable cause. The statement must contain a declaration, made by the appropriate individual, that the statement is made under penalties of perjury.
- (8) See IRM 20.1.1.3.2, Reasonable Cause, and Exhibit 20.1.8-3, EP and EO Reasonable Cause Guidelines.

20.1.8.3.2
(12-03-2020)
**IRC 6652(c) - Returns by
Exempt Organizations
and by Certain Trusts**

- (1) Penalties applicable under IRC 6652(c).

20.1.8.3.2.1
(10-18-2023)
**IRC 6652(c)(1) - Annual
Returns Under Section
6033(a)(1) or 6012(a)(6)**

- (1) IRC 6652(c)(1)(A) - outlines the penalty provisions related to the failure to file returns required by IRC 6033(a)(1) (exempt organizations) and IRC 6012(a)(6) (political organizations).
 - a. IRC 6033(n) requires certain exempt organizations, including political organizations, to electronically file Form 990 series returns. In general, the electronic filing requirement is effective for tax years that begin after July 1, 2019. Certain forms (e.g., Form 990 EZ, and Form 4720), however, have different mandatory electronic filing effective dates. See IRC 6033(n).
 - b. Most tax exempt organizations are required to file an annual Form 990, Form 990 EZ, or Form 990 PF with the IRS, or to submit a Form 990 N, e-Postcard, to the IRS. If a tax exempt organization fails to file a required annual information return or notice for three consecutive years, it will automatically lose its tax exempt status. See IRC 6033(j)(1)(B).
 - c. In addition to the Form 990 series requirements, IRC 527(j)(7) requires political organizations to electronically file Form 8872 returns, Political

Organization Report of Contributions and Expenditures. The electronic filing requirement is effective for tax years that begin after December 31, 2019.

- d. For returns filed after September 6, 2019, the final regulations provide that the requirement to report contributor names and addresses on annual returns generally applies only to returns filed by section 501(c)(3) organizations and section 527 political organizations. All tax-exempt organizations must continue to maintain the names and addresses of their substantial contributors in their books and records. See TD 9898, Guidance Under Section 6033 Regarding the Reporting Requirements of Exempt Organizations.
- e. IRC 6652(c)(1)(A) imposes a penalty on exempt organizations required to file annual returns under IRC 6033(a)(1) and IRC 6012(a)(6) for a failure to file on the date and manner prescribed, for a failure to include any of the information required to be shown, or for a failure to show the correct information.
- f. The penalty is \$20 for each day, during which a failure to file continues determined with regard to extensions. The maximum penalty under this subparagraph on failures with respect to any one return is \$12,000 or five percent of the gross receipts of the organization for the year, whichever is less.

Note: The penalty amounts listed are adjusted annually for inflation. See IRC 6652(c)(7).

- g. For an organization having gross receipts exceeding \$1,208,500 for any year, with respect to the return required under IRC 6033(a)(1) or IRC 6012(a)(6) for such year, instead of the penalty listed in (c) the penalty is \$120 per day with the maximum penalty of \$60,000 per return.

Note: The penalty amounts listed are adjusted annually for inflation. See IRC 6652(c)(7).

- (2) IRC 6652(c)(1)(B) - Managers, imposes a penalty on the manager or other person who fails to comply with a written demand from the IRS that the organization file required returns or furnish particular information. The penalty for failure to file or furnish returns is \$10 daily after the expiration of the time specified in the demand. The maximum penalty under this section on all persons for failure to file any one return is limited to \$6,000.
- (3) IRC 6652(c)(1)(C) - Public Inspection of Annual Returns and Reports
 - a. IRC 6652(c)(1)(C) imposes a penalty of \$20 a day on the person (as defined in IRC 6652(c)(6)(C)) who fails to comply with the requirement of IRC 6104(d) with respect to any annual return or any report required under IRC 527(j). The maximum penalty on all persons for failures with respect to one annual return or report is \$12,000.
 - b. IRC 6104(d) generally requires an organization described in subsection (c) or (d) of IRC 501 or an organization exempt under IRC 527 to make annual returns, or reports required under IRC 527(j), available for public inspection and, if requested, to provide copies.
 - c. IRC 6104(d)(3) describes the types of information not required to be disclosed under IRC 6104(d). The Pension Protection Act of 2006 added IRC 6104(d)(1)(A)(ii), which provides that tax exempt organizations

described in IRC 501(c)(3) must make Form 990 T available for public inspection effective for returns filed after August 17, 2006.

- d. In addition to the requirement that an organization make a copy of the annual returns filed during the 3 year period beginning after the last day prescribed for filing the return and the application for recognition of tax exempt status, including the report under IRC 527(j) by political organizations disclosing expenditures and contributions, available for inspection, an organization, except as provided in IRC 6104(d)(4), must provide a copy of its annual return and application, if requested. See IRC 6104(d)(1)(B) regarding the requirement to provide copies to requesters.
 - e. IRC 6104(d)(4) provides that there are limitations on the requirement to provide copies of returns or an application to a requester. An organization is not required to fulfill a request for a copy if: (1) The organization makes its return and application widely available as defined in Treas. Reg. 301.6104(d)-2(b), or (2) The organization can meet the criteria outlined in Treas. Reg. 301.6104(d)-3 and establish that the request for copies is part of a harassment campaign.
- (4) IRC 6652(c)(1)(D) - Public Inspection of Applications for Exemption and Notice of Status
- a. IRC 6652(c)(1)(D) imposes a penalty of \$20 a day on the person (as defined in IRC 6652(c)(6)(C)) who fails to either make the application available for inspection or to provide a copy of the application as required by IRC 6104(d). There is no maximum amount of penalty. Unlike the penalty for failure to provide public inspection of annual returns and reports under IRC 6652(c)(1)(C), the penalty under IRC 6652(c)(1)(D) relates to applications for exemption and notices of exempt organizations, including private foundations and political organizations.
 - b. IRC 6104(d)(6) provides that the term “notice materials” means the notice of status filed by political organizations under IRC 527(i), along with associated documents.
- (5) Prior to asserting penalties for failure to allow public inspection of returns and applications required under IRC 6104, the IRS should receive, in writing, the name of the person(s) who is under a duty to provide the return or application, as well as, the date of the failure, and a description of the facts of the failure.
- (6) Penalty Relief
- a. IRC 6652(c)(5) provides that no penalties should be asserted if any failure is due to reasonable cause. See IRM 20.1.1.3.2, Reasonable Cause, and Exhibit 20.1.8-3, EP and EO Reasonable Cause Guidelines.
 - b. For a discussion of penalty relief generally, see also IRM 20.1.1.3, Criteria for Relief From Penalties.
 - c. Notice 2019-47, Penalty Relief Related to Reliance on Rev. Proc. 2018-38 (released September 6, 2019), provides penalty relief to IRC 501(a), Exemption from Taxation, organizations that followed guidance outlined in Rev. Proc. 2018-38, Returns by Exempt Organizations and Returns by Certain Non-Exempt Organizations. Notice 2019-47 provides relief from penalties under IRC 6652(c)(1)(A), Penalties on Organization, for organizations exempt from tax under IRC 501(a), other than organizations described in IRC 501(c)(3), that did not report the names and addresses of their contributors on the Schedule B of their Form 990, Return of Organization Exempt from Income Tax, or Form 990 EZ, Short

Form - Return of Organization Exempt from Income Tax, filed for a taxable year ending on or after December 31, 2018, and on or prior to July 30, 2019.

- d. Notice 2010-13 establishes criteria under which tax exempt organizations can request waivers of the electronic filing requirement for certain returns for tax years beginning before July 1, 2019.
- e. Announcement 2021-18 revoked Announcement 2001-33. Announcement 2001-33, 2001-17 IRB 1137, provided tax-exempt organizations with reasonable cause for purposes of relief from the penalty imposed under section 6652(c)(1)(A)(ii) of the IRC if they reported compensation on their annual information returns in the manner described in Announcement 2001-33 instead of in accordance with certain form instructions. Announcement 2021-18, 2021-52 IRB 910, revoked Announcement 2001-33 and instructs affected tax-exempt organizations to follow the specific instructions to the Form 990, Form 990 EZ, and Form 990 PF, effective for annual information returns required for taxable years beginning on or after January 1, 2022.

20.1.8.3.2.2

(10-18-2023)

IRC 6652(c)(2) - Returns Under Section 6034 or 6043(b)

(1) IRC 6652(c)(2)(A) - Penalty on Organization or Trust

- a. IRC 6652(c)(2)(A) provides for a daily delinquency penalty to be asserted on the exempt organization or trust that fails to file a return required under IRC 6034 (trusts) or IRC 6043(b) (terminations, etc., of exempt organizations) on the date and in the manner as prescribed.
- b. The daily delinquency penalty for any one return under this section is \$10 per day for each day the failure continues, with a maximum penalty of \$6,000 per return.

Note: The penalty amounts listed are adjusted annually for inflation. See IRC 6652(c)(7).

(2) IRC 6652(c)(2)(B) - Managers

- a. IRC 6652(c)(2)(B) provides for a daily delinquency penalty to be asserted on the person that fails to comply with a written demand by the Secretary that a return required under IRC 6034 or IRC 6043(b) be filed or information be furnished by a reasonable future date (90 days after the mailing date of the demand).
- b. The daily delinquency penalty for any one return for this section is \$10 per day for each day the failure continues starting with the date specified in the written demand, with a maximum penalty of \$6,000 on all persons for the failure to file any one return.

(3) IRC 6652(c)(2)(C) - Split-Interest Trusts

- a. IRC 6652(c)(2)(C) provides a penalty for split-interest trusts that fail to file Form 5227, Split-Interest Trust Information Return, as required by IRC 6034 or IRC 6043(b). Effective with the Pension Protective Act (January 1, 2007), split-interest trusts are no longer required to file Form 1041-A, U.S. Information Return - Trust Accumulation of Charitable Amounts, and instead now must file Form 5227, Split-Interest Trust Information Return. See IRC 6034(a) for special tax treatment of a split-interest trust.
- b. The daily delinquency penalty for any one return is \$20 for each day during which the failure to file continues, not to exceed \$12,000. For any

trust with gross income exceeding \$302,000, the penalty for any one return is \$120 for each day the failure continues, not to exceed \$60,000.

(4) Penalty Relief

- a. IRC 6652(c)(5) provides that no penalties should be asserted if any failure is due to reasonable cause. See IRM 20.1.1.3.2, Reasonable Cause, and Exhibit 20.1.8-3, EP and EO Reasonable Cause Guidelines.
- b. For a discussion of penalty relief generally, see also IRM 20.1.1.3, Criteria for Relief From Penalties.

20.1.8.3.2.3

(10-18-2023)

**IRC 6652(c)(3) -
Disclosure Under
Section 6033(a)(2)**

- (1) IRC 6652(c)(3)(A) - Penalty on Entities: provides for a penalty for each failure by a tax exempt entity (the entity manager in the case of a tax exempt entity described in paragraph IRC 4965(c)(4), (5), (6), or (7)) to file a disclosure required under IRC 6033(a)(2) with respect to such entity's involvement in any prohibited tax shelter transaction. The penalty is \$120 for each day the failure continues, not to exceed \$60,000 with respect to any one disclosure.
- (2) IRC 6652(c)(3)(B) - authorizes the Secretary to make a written demand on any entity or manager subject to the penalty for nondisclosure under IRC 6033(a)(2), specifying a reasonable future date (90 days after the mailing date of the demand) by which the required disclosure must be filed. Failure to comply with the Secretary's demand is subject to an additional penalty in the amount of \$120 for each day after the expiration of the time specified in the demand during which such failure continues, not to exceed \$12,000 with respect to any one disclosure. The penalty is imposed on the tax exempt entity of non-plan entities and on the entity manager of plan entities for failure to file a disclosure and for failure to comply with the Secretary's demand for disclosure. Non-plan entities and plan entities are identified under IRC 4965(c).
- (3) Form 8886-T, Disclosure by Tax-Exempt Entity Regarding Prohibited Tax Shelter Transaction, is the applicable form that is required to be filed.
- (4) Penalty Relief.
 - a. IRC 6652(c)(5) provides that no penalties should be asserted if any failure is due to reasonable cause. See IRM 20.1.1.3.2, Reasonable Cause, and Exhibit 20.1.8-3, EP and EO Reasonable Cause Guidelines.
 - b. For a discussion of penalty relief generally, see also IRM 20.1.1.3, Criteria for Relief From Penalties.

20.1.8.3.2.4

(10-18-2023)

**IRC 6652(c)(4) – Failure
to Submit Notice of
Intent to Operate as IRC
501(c)(4) Organization
Under IRC 506**

- (1) IRC 6652(c)(4)(A) - Penalty on Organization
 - a. IRC 506 requires an organization to notify the Secretary no later than 60 days following establishment of its intent to operate as an exempt organization under IRC 501(c)(4). Notification is accomplished by the electronic filing of Form 8976.
 - b. Organizations established before 7/8/2016 were also required to file Form 8976 by 9/6/2016, unless they previously applied for a written determination of recognition as an organization described in IRC 501(c)(4), or they previously filed at least one annual information return required under IRC 6033(a)(1) or IRC 6033(i). See Rev. Proc. 2016-41

- c. IRC 6652(c)(4)(A) imposes a penalty on any organization operating as an exempt organization under IRC 501(c)(4) that fails to file Form 8976 as required. The penalty is \$20 for each day the failure continues, but it cannot exceed \$5,000.
- (2) IRC 6652(c)(4)(B) - Managers
 - a. IRC 6652(c)(4)(B) allows IRS to demand that the manager of an exempt organization penalized under IRC 6652(c)(4)(A) file Form 8976 by a reasonable future date that is stated in the demand to file. The reasonable future date is generally 90 from the date of the demand to file.
 - b. If the manager fails to file Form 8976 by such future date, a \$20 penalty is imposed for each day the failure continues beyond that date, up to a \$5,000 maximum.
- (3) Form 8976 must be filed electronically via the IRS Online Registration System for Professional Employer Organizations and 501(c)(4) Certification. 26 CFR 1.506-1 contains regulatory requirements covering the filing requirements under IRC 506, including the use of Form 8976 and the requirement to file electronically.
- (4) Assertion/Assessment of Penalty
 - a. Input on IDRS using information provided on Form 8278
 - b. Assessed using PRN 713, and
 - c. Not subject to deficiency procedures.
- (5) Penalty Relief
 - a. IRC 6652(c)(5) provides that no penalties should be asserted if any failure is due to reasonable cause. See IRM 20.1.1.3.2, Reasonable Cause, and Exhibit 20.1.8-3, EP and EO Reasonable Cause Guidelines.
 - b. For a discussion of penalty relief generally, see also IRM 20.1.1.3, Criteria for Relief From Penalties.
 - c. The preamble to T.D. 9873 (released July 19, 2019), mentions certain situations in which IRC 501(c)(4) organizations might qualify for reasonable cause relief if they do not satisfy the IRC 506 notification requirement. IRC 501(c)(4) organizations (including organizations formed before December 18, 2015, foreign organizations, small organizations, and organizations that originally operated under sections other than section 501(c)(4)) may seek reasonable cause relief by following the instructions in the penalty letter, as provided in Rev. Proc. 2016-41.

20.1.8.3.3
(10-18-2023)
IRC 6684 - Assessable Penalties With Respect to Liability for Tax Under Chapter 42

- (1) IRC 6684 provides that a penalty may be asserted on any person (as defined in IRC 7701) liable for tax under Chapter 42, Private Foundations and Certain Other Tax Exempt Organizations (other than sections 4940 and 4948(a)). See Treas. Reg. 301.6684-1(a). The act or failure to act must not due to reasonable cause and either:
 - a. The person was previously liable for excise tax under Chapter 42, or
 - b. The act or failure to act is both willful and flagrant.
- (2) The amount of the penalty is equal to the amount of the excise tax for which it is determined the person is liable.

- (3) The term “willful and flagrant” under IRC 6684 has the same meaning as such term possesses in section 507(a)(2)(A) and the regulations thereunder (i.e., an act “which is voluntarily, consciously, and knowingly committed in violation of any provision of Chapter 42, and which appears to a reasonable man to be a gross violation of any such provision.”) See Treas. Reg. 301.6684-1(c) and Treas. Reg. 1.507-1(c)(2).

Note: The IRS bears the burden of proof on whether an act or failure to act was willful and flagrant. See *Thorne v. Commissioner*, 99 T.C. 67, 86 (1992); *Moody v. Commissioner*, 70 T.C.M. (CCH) 678 (T.C. 1995).

- (4) The IRC 6684 penalty:
- a. Is assessed on Form 8278 (see IRM 20.1.8.2.4, How to Assess and Abate - Exempt Plan Procedures, for assessment procedures and IRM 20.1.1. 4, Methods of Appealing Penalties, for post-assessment appeal procedures.)
 - b. Does not apply if the reasonable cause for the act or failure to act can be affirmatively shown by the person upon whom the penalty is imposed.

20.1.8.3.4
(12-03-2020)

IRC 6685 - Failure to Comply With the Public Inspection Requirements for Certain Tax Exempt Organizations

- (1) IRC 6685 imposes a \$5,000 penalty on any person who is required to, and willfully fails to, comply with the public disclosure requirement of IRC 6104(d).
- a. This penalty will be assessed on Form 8278.
 - b. The civil penalty in IRC 6685 is in addition to the criminal penalty imposed by IRC 7207 (relating to fraudulent returns, statements, or other documents).
- (2) Before asserting penalties for failure to comply with the public disclosure requirements of IRC 6104(d), the IRS should obtain a statement from an individual denied inspection, or a copy of an application for recognition of exemption or an annual information return. The statement should describe the request, including the date the request was made and the reason for the individual’s belief that the denial was in violation of the legal requirements. The IRS should also obtain a response from the person required to disclose its application and annual information returns.
- (3) The amount of the penalty is \$5,000 with respect to each such return or application. There is no maximum amount of penalty.
- (4) The penalty may **not** be waived for reasonable cause.

20.1.8.3.5
(10-06-2022)

IRC 6710 - Failure to Disclose That Contributions are Nondeductible

- (1) IRC 6710 imposes a penalty on an organization that fails to meet the requirement of IRC 6113 with respect to a fund-raising solicitation required to disclose that contributions or gifts made to the organization (or on behalf of the organization) are not deductible as charitable contributions for federal income tax purposes.
- (2) IRC 6113 requires certain fund-raising solicitations to disclose (in a conspicuous and easily recognized format) that contributions or gifts made to the organization are not deductible as charitable contributions for federal income tax purposes.
- (3) Generally, the penalty applies to organizations, which are not described in IRC 170(c), but are described in IRC 501(c) or (d) and tax exempt under IRC

501(a). The fund-raising disclosure requirement does not apply to organizations with annual gross receipts that normally do not exceed \$100,000.

- (4) The penalty also applies to a political organization (as defined in IRC 527(e)).
- (5) This penalty is assessed on Form 8278.
- (6) IRC 6710(a) provides for a penalty of \$1,000 per day each day the failure occurred up to a maximum of \$10,000 during any calendar year.
- (7) IRC 6710(c) provides an exception to the maximum annual penalty of \$10,000. When it is shown that the failure was due to intentional disregard, the penalty for the day on which such failure occurred shall be the greater of:
 - a. \$1,000, or
 - b. 50 percent of the combined cost of all the solicitations which occurred such day where a failure to disclose occurred.
- (8) The penalty shall not be taken into account in applying such limitations to other penalties under IRC 6710(a).
- (9) Consider the following conditions when determining the day a failure to meet the requirement occurred.

IF the solicitation was	THEN the failure occurs when the solicitation is
by television or radio	televised or broadcast.
by mail	mailed.
not by mail but in written or printed form	distributed.
by telephone	made.

- (10) IRC 6710(b) provides that no penalty should be asserted if any failure is due to reasonable cause. See IRM 20.1.1.3.2, Reasonable Cause, and Exhibit 20.1.8-3, EO and EP Reasonable Cause Guidelines.

20.1.8.3.6 (10-06-2022) **IRC 6711 - Failure to Disclose Availability of Information or Service From Federal Government**

- (1) IRC 6711 provides that when a tax exempt organization offers to sell (or solicits money for) specific information or offers to provide routine service for any individual that could be readily obtained by such individual free of charge (or for a nominal charge) from an agency of the federal government, the tax exempt organization must, when making such offer or solicitation make "an express statement" in a conspicuous and easily recognizable format that the information can be obtained from the federal government.
- (2) Material and/or services available from the federal government for less than \$2.50, including postage and handling costs, meet the nominal charge requirement. See Notice 88-120 .
- (3) A penalty applies if the failure to make such express statement is due to the intentional disregard of this requirement.

- (4) This penalty is assessed on Form 8278.
- (5) See IRM 20.1.1.4, Methods of Appealing Penalties, for post-assessment appeal procedures.
- (6) The penalty may **not** be waived for reasonable cause.
- (7) For each day a failure occurred, the penalty shall be the greater of:
 - a. \$1,000 per day, or
 - b. 50 percent of the daily combined cost for all the offers and solicitations where a failure to disclose occurred.
- (8) There is no maximum amount of penalty.
- (9) Consider the following when determining the day a failure to meet the requirement occurred.

IF the solicitation was	THEN the failure occurs when the solicitation is
by television or radio	televised or broadcast.
by mail	mailed.
not by mail but in written or printed form	distributed.
by telephone	made.

20.1.8.3.7
(04-26-2018)

**IRC 6714 - Failure to
Meet Certain Disclosure
Requirements
Applicable to Quid Pro
Quo Contributions**

- (1) IRC 6714 imposes a penalty on organizations that did not disclose quid pro quo contributions in excess of \$75 as required under IRC 6115(a).
- (2) IRC 6115(b) defines “quid pro quo contribution” as a payment:
 - a. Made partly as a contribution and partly in consideration for goods or services provided to the payor (donor) by the donee organization; and
 - b. **Not** made to a religious organization, in return for which the taxpayer received only an intangible religious benefit that generally would not be sold in a commercial transaction.
- (3) IRC 6115 provides that organizations described in IRC 170(c) (except governmental instrumentalities described in IRC 170(c)(1)) are required to provide a written statement to each donor in connection with the solicitation or receipt of the quid pro quo contribution.
 - a. That statement must provide the donor with a good faith estimate of the value of the goods and services provided by the organization.
 - b. That statement must also inform the donor that the amount of the deductible contribution is limited to the excess of any money (and the value of any property other than money) contributed by the donor, that exceeds the value of the goods or services received.
- (4) IRC 6714 provides for a penalty of \$10 per failure to provide the required written statement to the payor (donor). The maximum penalty per fund-raising event or mailing shall not exceed \$5,000.

- (5) The penalty does not apply if the organization can establish that the failure to provide the written statement was due to reasonable cause.
- (6) This penalty is assessed on Form 8278.
- (7) See IRM 20.1.1.4, Methods of Appealing Penalties, for post-assessment appeal procedures.

20.1.8.3.8
(10-18-2023)

IRC 6720 – Fraudulent Acknowledgements With Respect to Donations of Motor Vehicles, Boats, and Airplanes

- (1) IRC 170(f)(12)(A) requires the donee organization to furnish a contemporaneous written acknowledgment to a donor when a qualified vehicle (motor vehicle, boat, or airplane) the claimed value of which exceeds \$500.
- (2) IRC 6720 provides for a penalty for any donee organization which knowingly furnishes a false or fraudulent acknowledgement, or which knowingly fails to furnish such acknowledgment in the manner, at the time, and showing the information required under IRC 170(f)(12), or the regulations thereunder.
- (3) IRC 6720 provides that for each act or for each failure, the penalty is equal to, in the case of:
 - a. a qualified vehicle to which IRC 170(f)(12)(A)(ii) applies, the greater of –
 - (i) the product of the highest tax rate specified in IRC 1 and the sales price, or
 - (ii) the gross proceeds of such vehicle, and
 - b. any other qualified vehicle to which IRC 170(f)(12) applies, the greater of –
 - (i) the product of the highest tax rate specified in IRC 1 and the claimed value of such vehicle, or
 - (ii) \$5,000.
- (4) The penalty is:
 - a. Input on IDRS using information provided on Form 8278,
 - b. assessed using PRN 630, and
 - c. applicable to contributions made after December 31, 2004. See section 884(c) of P.L. 108-357.

20.1.8.4
(12-03-2020)

Employee Plans (EP)

- (1) In general, TE/GE penalties involve plans which are subject to the Employee Retirement Income Security Act of 1974 (ERISA) which defer the receipt of compensation. The TE/GE penalties which are frequently encountered are discussed in this section.
- (2) The following IRC sections contain relevant information impacting the tax treatment of Employee Plans when considering penalty application:
 - a. IRC 6652(d), Annual Registration and Other Notification by Pension Plan
 - b. IRC 6652(e), Information Required in Connection with Certain Plans of Deferred Compensation, Etc
 - c. IRC 6652(h), Failure to Give Notice to Recipients of Certain Pension, Etc., Distributions
 - d. IRC 6652(i), Failure to Give Written Explanation to Recipients of Certain Qualifying Rollover Distributions
 - e. IRC 6690, Fraudulent Statement or Failure to Furnish Statement to Plan Participant
 - f. IRC 6692, Failure to File Actuarial Report

- g. IRC 6693, Failure to Provide Reports on Certain Tax-Favored Accounts or Annuities; Penalties Relating to Designated Nondeductible Contributions
- h. IRC 6704, Failure to Keep Records Necessary to Meet Reporting Requirements under Section 6047(d)

20.1.8.4.1
(12-03-2020)
EP Penalty Relief

- (1) The criteria establishing “reasonable cause” justification for penalty relief are contained in IRM 20.1.1, Introduction and Penalty Relief. See IRM 20.1.1.3, Criteria for Relief From Penalties.

20.1.8.4.2
(12-03-2020)
**IRC 6652(d) - Annual
Registration and Other
Notification by Pension
Plan**

- (1) Registration and notification of change of status applicable under IRC 6652(d).

20.1.8.4.2.1
(10-18-2023)
**IRC 6652(d)(1) -
Registration**

- (1) IRC 6652(d)(1) imposes a penalty on a plan administrator for any failure to file a registration statement required under IRC 6057(a). For plan years beginning after December 31, 2008, the Schedule SSA has been replaced by Form 8955-SSA, Annual Registration Statement Identifying Separated Participants with Deferred Vested Benefits. In general, plans subject to this requirement are those that result in the deferral of compensation. Although Schedule SSA (Form 5500) was previously used to satisfy the reporting requirements of IRC 6057(a)(1) for plan years prior to January 1, 2009, the Schedule SSA should no longer be filed under any circumstances. (See Announcement 2011-21, 2011-12 IRB 567). Instead, Form 8955-SSA should be filed for all plan years, including delinquent returns for plan years before 2009. In general, if a Form 8955-SSA must be filed for a plan year, it must be filed by the last day of the seventh month following the last day of that plan year (plus extensions).
- (2) Plans subject to this requirement include all qualified plans under IRC 401(a) or annuities under IRC 403(a) or IRC 403(b) that are subject to the vesting requirements of ERISA.
- (3) Plans not subject to this requirement include:
 - a. IRC 414(d), government plans;
 - b. IRC 414(e), church plans where no IRC 410(d) election has been made;
 - c. Any plan which is established or maintained by a labor organization described in IRC 501(c)(5) and which has not provided employer contributions;
 - d. Any plan established and maintained by a society, order, or association described in IRC 501(c)(8) or IRC 501(c)(9), if no part of the contribution is made by employers of participants in such plan;
 - e. Any plans exempted pursuant to ERISA 201, such as top hat and excess benefit plans; and
 - f. Plans that cover only owners and their spouses.
- (4) In general, IRC 6057(a) requires a plan administrator to file a registration statement for each plan year. This registration statement should include:
 - a. The name of the plan;
 - b. The name and address of the plan administrator;

- c. The name and taxpayer identification number of each participant in the plan, who— separated from service covered by the plan during the plan year (if not reported in the year of separation, such separated participant must be reported in the following year); is entitled to a deferred vested benefit; and did not receive retirement benefits;
 - d. The nature, amount and form of deferred vested benefit; and
 - e. Other information the IRS may require in forms, instructions, and applicable guidance.
- (5) Form 8955-SSA must be filed as a stand alone form with the IRS.
 - (6) Assess penalties under IRC 6652(d)(1) on the plan administrator (as defined in IRC 414(g), Plan Administrator).
 - (7) Penalties under IRC 6652(d)(2) will be assessed on BMF (MFT 74). The penalty is assessed as part of the CP 213 EP penalty process.
 - (8) The penalty is assessed using PRN 165.
 - (9) The penalty for failing to file on the due date is equal to:
 - a. \$10 for each participant for whom the required information was not filed multiplied by the number of days the failure continues.
 - b. The penalty shall not exceed \$50,000 for any plan year.
 - (10) For purpose of the penalty, the failure to report either the participant's name or social security number (SSN) is considered a failure to report the participant. Exceptions are granted for foreign nationals who are not required to have an SSN. For example:
 - a. Form contains 10 names, but only eight of which show SSNs. The penalty would be \$20 multiplied by the number of days the failure continues.
 - b. Form contains 50 names, but it shows 60 SSNs. The penalty would be \$100 multiplied by the number of days the failure continues.
 - (11) IRC 6652(d)(1) provides for non-assertion of the penalty if the plan administrator can show reasonable cause for the failure to timely file.
 - (12) The request for "penalty relief" due to reasonable cause must be made in the form of a written statement providing all the facts to substantiate reasonable cause. The statement must contain a declaration by the appropriate individual that the statement is made under penalties of perjury.
 - (13) See IRM 20.1.1.3.2, Reasonable Cause, and Exhibit 20.1.8-3, EO and EP Reasonable Cause Guidelines, for a discussion of reasonable cause penalty relief. See IRM 20.1.1, Introduction and Penalty Relief, for a general discussion of penalty relief.

20.1.8.4.2.2
(10-06-2022)
**IRC 6652(d)(2) -
Notification of Change
of Status**

- (1) IRC 6652(d)(2) imposes a penalty on the plan administrator for the failure to notify the IRS, by the due date, of changes in the status of a plan as required in IRC 6057(b).
- (2) In general, the plans subject to this requirement are those plans that are covered by IRC 6057(a).

- (3) Plans subject to this requirement include all qualified plans under IRC 401(a) or annuities under IRC 403(a), or IRC 403(b) subject to the vesting requirements of ERISA.
- (4) Plans **not** subject to this requirement include:
 - a. IRC 414(d) government plan;
 - b. IRC 414(e) church plan where no IRC 410(d) election has been made;
 - c. A plan which is established or maintained by a labor organization described in IRC 501(c)(5) and which has not provided employer contributions;
 - d. A plan established and maintained by a society, order, or association described in IRC 501(c)(8) or IRC 501(c)(9), if no part of the contributions is made by employers of participants in such plan;
 - e. Any plans exempted pursuant to ERISA 201 such as top hat or excess benefits plans; and
 - f. Any plans that cover only owners and their spouses.
- (5) IRC 6057(b) requires the plan administrator to notify the IRS of:
 - a. Any change in the name of the plan;
 - b. Any change in the name and address of the plan administrator;
 - c. Termination of the plan;
 - d. Merger or consolidation of the plan with any other plan; or
 - e. Division of the plan into two or more plans.
- (6) Assess penalties under IRC 6652(d)(2) on the plan administrator (as defined in IRC 414(g), Plan Administrator).
- (7) Penalties under IRC 6652(d)(2) will be assessed on BMF (MFT 74) as part of the CP 213 EP penalty process. They are computed after the return is processed on master file, or they may be asserted by the EP/EO specialist.
- (8) The penalty for failing to file the form on the due date in the prescribed manner is equal to:
 - a. \$10 for each failure multiplied by the number of days the failure continues.
 - b. The penalty shall not exceed \$10,000 for failure to file any notification.
- (9) IRC 6652(d)(2) provides for non-assertion of the penalty if the plan administrator can show reasonable cause for the failure to timely file.
- (10) The request for "penalty relief" due to reasonable cause must be made in the form of a written statement providing all the facts to substantiate reasonable cause. The statement must contain a declaration by the appropriate individual that the statement is made under penalties of perjury.
- (11) See IRM 20.1.1.3.2, Reasonable Cause, and Exhibit 20.1.8-3, EP and EO Reasonable Cause Guidelines, for a discussion of reasonable cause penalty relief. See IRM 20.1.1, Introduction and Penalty Relief, for a general discussion of penalty relief.

20.1.8.4.3
(10-18-2023)

**IRC 6652(e) - Information
Required in Connection
With Certain Plans of
Deferred Compensation,
Etc.**

- (1) IRC 6652(e) imposes a penalty for failure to file annual returns and statements by the due date and in the prescribed manner required under:
 - a. IRC 6058 relating to certain plans of deferred compensation, and
 - b. IRC 6047(d) relating to certain trusts, annuities, and bond purchase plans.
- (2) In general, IRC 6058(a) requires the employer or the plan administrator of each funded plan of deferred compensation, to file an annual return (Form 5500 (series), Annual Return/Report of Employee Benefit Plan). See Exhibit 20.1.8-1, Plans Filing Requirements, and Exhibit 20.1.8-2, Plans Exempt From Filing.
- (3) In general, the due date for the Form 5500, Annual Return/Report of an Employee Benefit Plan, and appropriate schedules and attachments is:
 - a. **Full Plan Year:** The appropriate Form 5500 and its applicable schedules and attachments must be filed by the last day of the 7th month after the plan year ends.
 - b. **Short Plan Year:** Form 5500 and its applicable schedules and attachments must be filed by the last day of the 7th month after the short plan year ends.
- (4) In general the extension of time to file is:
 - a. A one time extension of time to file Form 5500 and its required schedules and attachments (up to the 15th day of the 10th month following the last day of the plan year) will be granted by filing Form 5558, Application for Extension of Time to File Certain Employee Plan Returns.
 - b. Form 5330, Return of Excise Taxes Related to Employee Benefit Plans, starts the statute of limitations running with respect to particular excise taxes, including those under IRC 4975. The statute of limitations for IRC 4975 excise taxes begins to run with the filing of the Form 5500 provided the prohibited transaction is sufficiently disclosed. See IRM 4.71.9.5.2.

Reminder: The filing of Form 5330 may be extended for up to six months.
 - c. Form 5558 must be filed on or before the original due date for filing the Form 5500 (series) and Form 5330. For plan years beginning on or after January 1, 2023, Form 8868 is the form that must be used to request the extension to file the Form 5330.
- (5) Plans are automatically granted extensions of time to file Form 5500 and its required schedules until the extended due date of the federal income tax return of the employer and are not required to file Form 5558, if all the following conditions are met:
 - a. The plan year and the tax year of the employer are the same;
 - b. The employer has been granted an extension of time to file its federal income tax return to a date later than the normal due date for filing the Form 5500; and
 - c. A copy of the extension of time to file the federal income tax return is no longer required to be attached to the Form 5500 or Form 5500-SF, "The

Short Form Annual Return/Report of Small Employee Benefit Plan,” when filed electronically. However, a copy of the extension should be kept with the plan’s records.

- (6) Plans granted an extension under the conditions in (5) above, cannot further extend the due date by filing a Form 5558.
- (7) In general, IRC 6058(b) requires a plan administrator to file an actuarial statement of valuation evidencing compliance with IRC 401(a)(12), in the case of a merger, consolidation, or transfer of assets or liabilities from one plan to another.
 - a. Form 5310-A, Notice of Plan Merger or Consolidation, Spin-off, or Transfer of Plan Assets or Liabilities, Notice of Qualified Separate Lines of Business, has been designated by the IRS as the form to be used for satisfying this requirement.
 - b. Form 5310-A should be filed when there is a plan merger, consolidation, spin-off, or when there is a transfer of assets or liabilities to another plan. When meeting this criteria, Form 5310-A should be filed by the plan administrator or plan sponsor for a pension plan, profit-sharing plan, or a deferred compensation plan (except a multi-employer plan covered by the Pension Benefit Guaranty Corporation (PBGC) insurance).
 - c. Form 5310-A must be filed at least 30 days prior to a plan merger, consolidation, spin-off, or transfer of liabilities to another plan. The form is late if not filed at least 30 days before any of these referenced activities.
- (8) The instructions for Form 5310-A provide that a Form 5310-A is not required to be filed for:
 - a. An eligible rollover that is paid directly to an eligible retirement plan in a direct rollover as described in IRC 401(a)(31), Direct Transfer of Eligible Rollover Distributions; or
 - b. Any plan merger, consolidation, spin-off, or transfer of plan assets and liabilities complying with: i) Treas. Reg. 1.414(l)-1(d), Merger of Defined Contribution Plans, ii) Treas. Reg. 1.414(l)-1(h), De Minimus Rule for Merger of Defined Benefit Plan, iii) Treas. Reg. 1.414(l)-1(m), Spin-off of a Defined Contribution Plan, or iv) Treas. Reg. 1.414(l)-1(n)(2), Spin-off of a Defined Benefit Plan, De Minimus Rule.
- (9) In general, IRC 6047(d) requires Form 1096, (Annual Summary and Transmittal of U.S. Information Returns) and Form 1099-R, (Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRA’s, Insurance Contracts, etc.) to be filed by:
 - a. the employer maintaining or the plan administrator (within the meaning of IRC 414(g)) of a plan from which designated distributions (as defined in IRC 3405(e)(1)) may be made; and
 - b. any person issuing any contract under which designated distributions may be made.
- (10) Designated distributions are defined in IRC 3405(e)(1) and include, generally, any includible non-wage distributions from an employer deferred compensation plan, an IRA, or a commercial annuity.
- (11) A separate Form 1099-R must be made for each payee, but is not required if the aggregate payment to the payee is less than \$10.

- (12) Form 1099-R is required to be filed with the IRS following the year of the distribution. File Form 1099-R as follows:
 - a. Furnish Copies B, C, and 2 of this form **to the recipient** by January 31.
 - b. File Copy A of this form with the IRS by February 28.
 - c. If filing electronically, the due date is March 31. Information Returns Intake System (IRIS) has an online portal in which no special software is needed to e-file. Please refer to Pub 5717 or www.irs.gov/iris. IRIS also has Application to Application (A2A) functionality for e-filing information returns which does require special software. Please refer to Pub 5718 and Pub 5719 or www.irs.gov/iris. File Information Returns Electronically (FIRE) is another A2A e-filing option for information returns. Special software is required. Please refer to Pub 1220 or www.irs.gov/fire.
- (13) Form 1096 is required to be filed with the IRS following the year of the distribution. File Form 1096 as follows:
 - a. With Forms 1097, 1098, 1099, 3921, 3922, or W-2G, file by February 28.
 - b. With Forms 5498, file by May 31.
- (14) Assess penalties under IRC 6652(e) on the plan administrator as defined in IRC 414(g), Plan Administrator. The employer and/or contract issuer may also be liable.
- (15) The penalty is assessed using PRN 167.
- (16) The penalty under IRC 6652(e) will be assessed on BMF (MFT 74) as part of the CP 213 EP penalty process. It is computed after the return is processed on the master file, or it may be asserted by an EP/EO specialist.
- (17) The penalty imposed by IRC 6652(e) for failing to file any form required under IRC 6058 and IRC 6047 on the due date in the prescribed manner is equal to:
 - a. \$250 for each failure multiplied by the number of days the failure continues.
 - b. The penalty shall not exceed \$150,000 for the failure to file any return.
- (18) IRC 6652(e) provides for non-assertion of the penalty if reasonable cause can be shown.
- (19) The request for "penalty relief" due to reasonable cause must be made in the form of a written statement providing all the facts to substantiate reasonable cause. The statement must contain a declaration by the appropriate individual that the statement is made under penalties of perjury.
- (20) In *Alton OB-Gyn, Ltd. v. United States*, 789 F.2d 515 (7th Cir. 1986), the taxpayer's reliance on a bank, as plan trustee, to handle ministerial duties of taxpayer's pension and profit-sharing plans, did not constitute reasonable cause for the failure to timely file the required Form 5500 series return.
- (21) See IRM 20.1.1.3.2, Reasonable Cause, and Exhibit 20.1.8-3, EP and EO Reasonable Cause Guidelines, for a discussion of reasonable cause penalty relief. See IRM 20.1.1, Introduction and Penalty Relief, for a general discussion of penalty relief.

- (22) The penalty is imposed against the person responsible for the failure to file as reflected in the chart below:

IF failure to file the	THEN the party liable for the penalty is
Form 5500 series (annual return)	the plan administrator (within the meaning of IRC 414(g)) or the employer (who may be jointly and severally liable).
Form 5310-A in the case of a merger, consolidation, or transfer of plan assets or liabilities.	the plan administrator (within the meaning of IRC 414(g)).
Form 1096 or Form 1099-R	<ul style="list-style-type: none"> the plan administrator (within the meaning of IRC 414(g)), or the employer and any person issuing contract under which distributions are made

20.1.8.4.4
(10-06-2022)
IRC 6652(h) - Failure to Give Notice to Recipients of Certain Pension, Etc., Distributions

- (1) IRC 6652(h) imposes a penalty for each failure to give notice concerning withholding to recipients of distributions from an employer's deferred compensation plan or an Individual Retirement Account (IRA) as required by IRC 3405(e)(10)(B). The penalty is imposed on the payor.
- (2) In general, IRC 3405(e)(10)(B) requires that the "payor" of:
 - a. Any annuity or similar periodic payment must provide the "Payee" a notice of the right to elect not to have withholding made on such payment; or
 - b. Any distribution which is not in the form of an annuity or a periodic distribution must provide the "Payee" a notice of the right to elect not to have withholding made on such payment.
- (3) In general, these requirements pertain to payments and distributions made from employer deferred compensation plans, individual retirement plans, and commercial annuities.
- (4) **Due Date:** The notice of election must be transmitted no earlier than six months before the first payment and no later than when the first payment is made. For periodic payments, notice must also be provided at least once in each calendar year of the right to make and revoke the election. See Treasury Regulation (Treas. Reg.) 35.3405-1T D-21, D-22, D-25, and D-26 for examples of notices that can be used to satisfy the notice requirements.
- (5) The penalty under IRC 6652(h) is identified by the Tax Exempt/Government Entities (TE/GE) specialist.
- (6) The penalty is assessed on BMF (MFT 74) as part of the CP 213 Employee Plan (EP) penalty process. It is computed after the return is processed on the master file, or it may be asserted by an Employee Plan/Exempt Organization (EP/EO) specialist.

- (7) The penalty under IRC 6652(h) is \$100 for each failure to give notice, up to a maximum penalty of \$50,000 for all such failures per calendar year.
- (8) IRC 6652(h) provides for non-assertion of the penalty if the payor can show that the failure was due to reasonable cause and not due to willful neglect.
- (9) The request for “penalty relief” due to reasonable cause must be made in the form of a written statement providing all the facts to substantiate reasonable cause. The statement must contain a declaration by the appropriate individual that the statement is made under penalties of perjury. See IRM 20.1.1.3.2, Reasonable Cause, and Exhibit 20.1.8-3, EP and EO Reasonable Cause Guidelines, for a discussion of reasonable cause penalty relief. See IRM 20.1.1, Introduction and Penalty Relief, for a general discussion of penalty relief.

20.1.8.4.5
(10-06-2022)

IRC 6652(i) - Failure to Give Written Explanation to Recipients of Certain Qualifying Rollover Distributions

- (1) IRC 6652(i) imposes a penalty for each failure to timely provide a written explanation of an eligible rollover distribution as required by IRC 402(f), Written Explanation to Recipients of Distributions Eligible for Rollover Treatment.
- (2) In general, IRC 402(f) requires plan administrators of qualified plans to provide a written explanation to recipients of eligible rollover distributions that explains:
 - a. The rules under which a recipient may elect a direct rollover to an eligible retirement plan;
 - b. Withholding of income tax if there is no direct rollover;
 - c. The rules which permit tax deferral on the distribution if it is rolled over into an eligible retirement plan within 60 days of distribution;
 - d. If applicable, the provisions of IRC 402(d), Taxability of Beneficiary of Certain Foreign Situs Trusts, and IRC 402(e), Other Rules Applicable to Exempt Trust; and
 - e. The provisions under which distributions from the eligible retirement plan receiving the distribution may be subject to restrictions and tax consequences which are different from those applicable to distributions from the plan making such distributions.
- (3) In general an eligible retirement plan includes the following:
 - a. IRC 408(a), Individual Retirement Accounts
 - b. IRC 408(b), Individual Retirement Annuity (other than an endowment contract)
 - c. IRC 401(a), Trusteed Pension Plans
 - d. IRC 403(a), Annuity Plans
 - e. IRC 403(b), 403(b) Plans
 - f. IRC 457(b), Governmental 457(b) Plans
- (4) An eligible rollover distribution means any distribution to an employee of all or part of the balance to the credit of the employee in a qualified trust, other than certain periodic payments, hardship distributions, and distributions required by IRC 401(a)(9).
- (5) **Due Date:** The explanation must be provided no less than 30 days and no more than 90 days before the date of the distribution.
- (6) The penalty under IRC 6652(i) is identified by the EP specialist.

- (7) The penalty is assessed on Business Master File (BMF) Master File Transaction (MFT 74) as part of the Computer Paragraph CP 213 EP penalty process. It is computed after the return is processed on the master file, or it may be asserted by an EP specialist.
- (8) The penalty under IRC 6652(i) is \$100 for each failure to provide a written explanation, up to a maximum penalty of \$50,000 for all such failures per calendar year.
- (9) IRC 6652(i) provides for non-assertion of the penalty if the payor can show that the failure was due to reasonable cause and not due to willful neglect.
- (10) The request for "penalty relief" due to reasonable cause must be made in the form of a written statement providing all the facts to substantiate reasonable cause. The statement must contain a declaration by the appropriate individual that the statement is made under penalties of perjury. See IRM 20.1.1.3.2, Reasonable Cause, and Exhibit 20.1.8-3, EP and EO Reasonable Cause Guidelines, for a discussion of reasonable cause penalty relief. See IRM 20.1.1, Introduction and Penalty Relief, for a general discussion of penalty relief.

20.1.8.4.6
(12-03-2020)

**IRC 6690 - Fraudulent
Statement or Failure to
Furnish Statement to
Plan Participant**

- (1) IRC 6690 imposes a penalty on a plan administrator who:
 - a. Willfully fails to furnish a statement to a plan participant showing the information at the time and in the manner required by IRC 6057(e), Individual Statement to Participant, or
 - b. Willfully furnishes a false or fraudulent statement.
- (2) In general, the individual statement to a participant required by IRC 6057(e) must include the following:
 - a. A description of the participant's deferred vested retirement benefit;
 - b. Information filed with respect to the participant on Form 8955-SSA, Annual Registration Statement Identifying Separated Participants with Deferred Vested Benefits, and
 - c. Notice to the participant of any benefits that are forfeitable in the event the participant dies before a certain date. See IRC 6057(a).
- (3) **Due Date:** The due date for delivering the statement to the individual is no later than the due date (including extensions) for the Form 8955-SSA that reports information with respect to the individual.

Note: Form 8955-SSA is the successor to Schedule SSA (Form 5500) under Announcement 2011-21, 2011-12 IRB 567

- (4) The penalty under IRC 6690 can be identified by the EP specialist.
- (5) The penalty is assessed using PRN 168.
- (6) The penalty is assessed on BMF (MFT 74) as part of the CP 213 EP penalty process. It is computed after the return is processed on the master file, or it may be asserted by an EP specialist.
- (7) The penalty under IRC 6690 is not subject to deficiency procedures described in IRM 20.1.1.4.2, Deficiency Procedures.
- (8) The penalty is imposed at \$50 for each act or failure with no maximum.

20.1.8.4.7
(12-03-2020)
**IRC 6692 - Failure to File
Actuarial Report**

- (9) IRC 6690 provides a penalty for willfully failing to provide the statement, or willfully furnishing a false or fraudulent statement. Therefore, this code section does not provide for reasonable cause consideration.
- (1) IRC 6692 imposes a penalty on the plan administrator of a defined benefit plan to which IRC 412, Minimum Funding Standard, applies, when the plan administrator fails to file an actuarial report (Form 5500, Schedule SB or MB), in the time and manner as required by IRC 6059, Periodic Report of Actuary.
- (2) The penalty under IRC 6692 is imposed if there is a failure to file Schedule SB, Single Employer Defined Benefit Plan Actuarial Information, or Schedule MB, Multi-employer Defined Benefit Plan and Certain Money Purchase Plan Actuarial Information, which must be filed as an attachment to the appropriate Form 5500 (series) return.
- (3) The penalty is imposed on the plan administrator. If more than one plan administrator is responsible for the failure, all are jointly and severally liable.
- (4) The penalty under IRC 6692 is assessed on BMF (MFT 74) as part of the CP 213 EP penalty process.
- (5) The penalty may be computed when the return is filed or asserted by the EP specialist.
- (6) The penalty is assessed using PRN 169.
- (7) The penalty is imposed at \$1,000 for each failure to file with no maximum.
- (8) The penalty is assessed on BMF (MFT 74) as part of the CP 213 EP penalty process. It is computed after the return is processed on the master file, or it may be asserted by an EP specialist.
- (9) IRC 6692 provides for non-assertion of the penalty if the responsible party can show that the failure was due to reasonable cause.
- Note:** The failure of an actuary to give the plan administrator a complete Schedule SB or MB on time is not reasonable cause.
- (10) The request for “penalty relief” due to reasonable cause must be made in the form of a written statement providing all the facts to substantiate reasonable cause. The statement must contain a declaration by the appropriate individual that the statement is made under penalties of perjury.
- (11) See IRM 20.1.1.3.2, Reasonable Cause, and Exhibit 20.1.8-3, EP and EO Reasonable Cause Guidelines, for a discussion of reasonable cause penalty relief. See IRM 20.1.1, Introduction and Penalty Relief, for a general discussion of penalty relief.

20.1.8.4.8
(10-06-2022)

**IRC 6693 - Failure to
Provide Reports on
Certain Tax-Favored
Accounts or Annuities;
Penalties Relating to
Designated
Nondeductible
Contributions**

- (1) Covered under this sub-section are each of the penalties imposed by IRC 6693:

- a. IRC 6693(a), **Reports** - Person required to report;

Note: IRC 6693(a) provides that the penalty thereunder does not apply to information returns or payee statements regarding payments to other persons required by IRC 408(i). The failure to satisfy IRC 408(i) regarding payments to other persons is penalized under IRC 6721 and IRC 6722.

- b. IRC 6693(b)(1), Overstatement of Designated Nondeductible Contributions;
c. IRC 6693(b)(2), Failure to File Form; and
d. IRC 6693(c), Penalties Relating to Simple Retirement Accounts.

- (2) IRC 6693(a) imposes a penalty on the failure to furnish a report required by IRC 408(i) and IRC 408(l).

- (3) IRC 408(i) requires that:

- a. Annual calendar year reports be made on Form 5498, IRA Contribution Information, concerning the status of the account or annuity.
b. Each trustee or issuer required to file Form 5498 is also required to furnish the participant a statement containing the information required to be furnished on Form 5498 plus the value of the account or annuity at the end of the calendar year. A copy of the Form 5498 may be used to satisfy this requirement.
c. The disclosure statements and copies of the governing instruments be provided to benefited individuals. A benefited individual is the individual for whom an individual retirement account, individual retirement annuity, or an endowment contract is established. A benefited individual also includes both the working and non-working spouse in the case of spousal individual retirement accounts.

Note: The penalty for failure to satisfy these requirements of IRC 408(i) is imposed on the trustee of an individual retirement account or, in the case of an individual retirement annuity or endowment contract, the issuer. This includes an account or annuity that is part of a SEP or a SIMPLE IRA plan.

- (4) IRC 408(l) requires that an employer who:

- a. Makes contributions to a simplified employee pension (SEP) on behalf of employees make reports to employees upon adoption of the SEP indicating its adoption, contribution requirements, and allocation basis.
b. Adopts a SEP furnish employees a written statement each calendar year indicating the amount of employer contribution to the employee's IRA. This requirement is satisfied if the information is contained on the employee's W-2 for the calendar year in which the contribution is made.

Note: The penalty for failure to satisfy these requirements of IRC 408(l) is imposed on the employer maintaining the SEP.

- (5) **Due Date - IRC 6693(a):**

- a. The annual report is to be filed, accompanied by transmittal Form 1096, on or before May 31 following the calendar year for which the Form 5498 is required.

- b. In general, the disclosure statement and a copy of the governing instrument must be received by the benefited individual at least seven days preceding the earlier of the date of establishment or purchase of the account, annuity, or endowment contract.
 - c. Reports required on the adoption of a SEP are to be furnished to an employee no later than a reasonable time after the later of the time the employee becomes employed or the time of the adoption of the simplified employee pension arrangement.
 - d. SEP contribution reports made on Form W-2 are required to be furnished to the employee no later than the later of 30 days after the contribution or January 31 after the calendar year for which the contribution was made.
- (6) IRC 6693(a) penalty also applies to reports required to be filed under:
- a. IRC 220(h) relating to medical savings accounts ("MSAs"), assessed using PRN 553, input on IDRS using information provided on Form 8278 ;
 - b. IRC 223(h) (relating to health savings accounts), assessed using PRN 554;
 - c. IRC 529(d) (relating to qualified State tuition programs);assessed using PRN 555, input on IDRS using information provided on Form 8278;
 - d. IRC 529A(d) (relating to qualified ABLE (Achieving a Better Life Experience) programs), assessed using PRN 568, input on IDRS using information provided on Form 8278; and
 - e. IRC 530(h) (relating to Coverdell education savings accounts), assessed using PRN 556, input on IDRS using information provided on Form 8278.
- (7) The Stephen Beck, Jr., Achieving a Better Life Experience Act (ABLE Act) was enacted on December 19, 2014, as part of The Tax Increase Prevention Act of 2014 (P.L. 113-295). Generally, the ABLE Act permits a state (or a state agency or instrumentality) to establish and maintain a tax-advantaged savings program (under IRC 529A of the Internal Revenue Code). Contributions may be made to a IRC 529A account established for a designated beneficiary to pay for qualified disability expenses. ABLE programs will use two forms (Form 1099-QA, Distributions from ABLE Accounts and Form 5498-QA, ABLE Account Contribution Information) to report relevant account information annually to designated beneficiaries and the IRS.
- a. Any State or its agency or instrumentality that establishes and maintains a qualified ABLE program must file a Form 1099-QA, Distributions from ABLE Accounts, with the IRS for each ABLE account from which any distribution was made or which was terminated. The filing may be done by either an officer or employee of the State or its agency or instrumentality having control of the qualified ABLE program, or the officer's or employee's designee. If Form 1099-QA is required to be filed, then a statement must also be furnished to the designated beneficiary of each ABLE account reporting their distribution, and to each contributor who received a returned contribution (plus earnings) attributable to the calendar year. A copy of Form 1099-QA or an acceptable substitute statement must be furnished to each recipient.
 - b. Any State or its agency or instrumentality that establishes and maintains a qualified ABLE program must file, for each ABLE account, a Form 5498-QA, ABLE Account Contribution Information, with the IRS. The filing may be done by either an officer or employee of the State or its agency

or instrumentality having control of the qualified ABLE program, or the officer's or employee's designee. If Form 5498-QA is required to be filed with the IRS, then a statement must be furnished to the designated beneficiary. A copy of Form 5498-QA or an acceptable substitute statement must be furnished to each beneficiary.

Note: The penalties under IRC 6721 and IRC 6722 do not apply to Form 1099-QA and Form 5498-QA. The penalty for failure to timely file Form 1099-QA and Form 5498-QA is \$50 per return (under IRC 6693) with no maximum, unless the failure is due to reasonable cause.

- (8) IRC 6693(b)(2) imposes a penalty on the failure to furnish information under IRC 408(o)(4).
- (9) IRC 408(o)(4) requires that an individual who makes designated nondeductible contributions to any IRA for any taxable year or receives a distribution from any IRA to which nondeductible contributions have been made for any taxable year report such contributions or distribution, as well as other information, on Form 8606, Nondeductible IRAs.
- (10) IRC 6693(b)(1) imposes a penalty on the overstatement of designated nondeductible contributions made on Form 8606.
- (11) The penalty for failure to satisfy the requirements of IRC 408(o) is imposed on the taxpayer who made the contributions or received the distribution.
- (12) **Due Date.** Form 8606, Nondeductible IRAs, is required to be filed as an attachment to the Form 1040 (series). If no 1040 return is required, the Form 8606 must still be filed by the due date of the Form 1040.
- (13) The penalty under IRC 6693(a) and IRC 6693(b):
 - a. Can be identified by the EP field agent;
 - b. Is assessed on BMF (MFT 74) as part of the CP 213 EP penalty process; and
 - c. Is not subject to deficiency procedures described in IRM 20.1.1.4.2, Deficiency Procedures.
- (14) IRC 6693(c) imposes a penalty on the failure to furnish certain information required under IRC 408(i) and IRC 408(l)(2) to participants in SIMPLE IRA plans described in IRC 408(p).
 - a. IRC 408(l)(2) requires that the trustee or issuer of an IRA set up to receive contributions under an employer's SIMPLE IRA plan each calendar year furnish the employer a **summary description** containing information regarding the SIMPLE IRA plan, the employer maintaining the plan, and the trustee or issuer.
 - b. IRC 408(l)(2) also requires that an employer maintaining a SIMPLE IRA plan notify eligible employees of their right to participate in the plan. Such **notice** must include a copy of the applicable summary description.
 - c. IRC 408(i) requires that the trustee or issuer of SIMPLE IRAs provide the SIMPLE IRA owners within 31 days after each calendar year a **statement** showing the account balance at the close of the calendar year and the account activity during that calendar year. A copy of the Form 5498 may be used to satisfy this requirement.

- (15) The penalty for failure to satisfy the requirement of IRC 408(i) and IRC 408(l)(2) described above is imposed on:
- a. The trustee or issuer of IRAs set up to receive contributions made under a SIMPLE IRA plan, in the case of the summary description and the statement requirement.
 - b. The employer, in the case of the notice requirement.
- (16) **Due Date:**
- a. The employer's notice to employees must be provided before the 60-day election period (during which eligible employees can make or change salary deferral elections) described in IRC 408(l)(2)(C).
 - b. The summary description must be provided to the employer by the trustee or issuer in time for the employer to meet its notice requirement, described above. (In most cases the summary description will be due the employer shortly before the second day of November of each calendar year).
 - c. The statement from the trustee or issuer is due to the IRA owner no later than 31 days after the end of the calendar year.
- (17) The computations for the penalties are as follows:

IF the penalty is for	THEN the penalty is
failure to file a report, as described in IRC 6693(a) at the time and in the manner required	\$50 for each failure to file.
failure to file Form 8606, nondeductible IRAs, as described in IRC 6693(b)(2)	\$50 for each failure to file.
overstating designated nondeductible contributions, as described in IRC 6693(b)(1)	\$100 for each overstatement.
failure to provide one or more notices, statements or summary descriptions described in IRC 6693(c)	\$50 for each day such failure continues.

- (18) IRC 6693 provides for non-assertion of the penalty if it is shown that the failure is due to reasonable cause.
- a. A penalty imposed on a trustee under IRC 6693(c) does not apply when the trustee timely provides the required information directly to the employee covered by the SIMPLE IRA plan.
 - b. A penalty imposed on an employer under IRC 6693(c) does not apply when an employee covered by the SIMPLE IRA plan has selected his or her own trustee and the information regarding that trustee is not available at the time the employer is required to provide the notice containing such information to the employee, provided the employer takes steps to ensure the missing information reaches the employee as soon as reasonably possible.

- (19) The request for “penalty relief” due to reasonable cause must be made in the form of a written statement providing all the facts to substantiate reasonable cause. The statement must contain a declaration, made by the appropriate individual, that the statement is made under penalties of perjury. See IRM 20.1.1, Introduction and Penalty Relief, for a discussion of penalty relief.
- (20) See IRM 20.1.1.3.2, Reasonable Cause, and Exhibit 20.1.8-3, EP and EO Reasonable Cause Guidelines, for a discussion of reasonable cause penalty relief. See IRM 20.1.1, Introduction and Penalty Relief, for a general discussion of penalty relief.

20.1.8.4.9

(12-03-2020)

**IRC 6704 - Failure to
Keep Records
Necessary to Meet
Reporting Requirements
Under IRC 6047(d)**

- (1) IRC 6047(d) requires the employer maintaining, or the plan administrator of a plan and any person issuing any contract under which designated distributions may be made, to make returns and reports regarding such plan or contract to:
 - a. The Secretary,
 - b. The participants, and
 - c. The beneficiaries
- (2) IRC 6704(a) imposes a penalty on any person who:
 - a. Has a duty to report or may have duty to report any information under IRC 6047(d), and
 - b. Fails to keep such records for the purpose of providing the necessary data base for either current reporting or future reporting.
- (3) IRC 6704(b) provides for a penalty of \$50, per each calendar year, multiplied by the number of individuals in relation to whom such failure occurred.
- (4) The maximum amount of penalty shall not exceed \$50,000.
- (5) IRC 6704(c)(1) provides for non-assertion of the penalty if it is shown that the failure is due to reasonable cause and not due to willful neglect.
- (6) The request for “penalty relief” due to reasonable cause must be made in the form of a written statement providing all the facts to substantiate reasonable cause. The statement must contain a declaration, made by the appropriate individual, that the statement is made under penalties of perjury. See IRM 20.1.1, Introduction and Penalty Relief, for a discussion of penalty relief.

Exhibit 20.1.8-1 (10-18-2023)**IRC 6058(a) - Plans Filing Requirements**

Pension benefit plans required to file include defined benefits plans and defined contribution plans. In addition to qualified plans under IRC 401(a), the following additional plans are among the pension benefit plans for which a return/report must be filed:

1. **Annuity Arrangements** under IRC 403(b)(1) that are subject to ERISA.
2. **Custodial Accounts** established under IRC 403(b)(7) for regulated investment company stock that are subject to ERISA.
3. **Individual Retirement Accounts (IRAs)** established by an employer under IRC 408(c).
4. **Pension Benefit Plans** maintained outside the United States primarily for nonresident aliens if the employer who maintains the plan is:
 - a. A domestic employer, or
 - b. A Foreign employer with income derived from sources within the United States (including foreign subsidiaries of domestic employers) if contributions to the plan are deducted on its U.S. income tax return. For this type of plan, see Code D on line 6c.
5. **Church Plans** electing coverage under IRC 410(d).
6. **A plan that covers residents** of Puerto Rico, the Virgin Islands, Guam, Wake Island, or American Samoa. This includes a plan that elects to have the provisions of 1022(1)(2) of ERISA apply.

Exhibit 20.1.8-2 (10-18-2023)**IRC 6058(a) - Plans Exempt From Filing**

Do not file a return/report for an employee benefit plan that is any of the following:

1. **A pension benefit plan maintained outside the United States** if it is a qualified foreign plan within the meaning of IRC 404A(e) that does not qualify for the treatment provided in IRC 401(a)(4).
2. **An annuity arrangement** described in 29 Code of Federal Regulations (CFR) 2510.3-2(f) or any **annuity arrangement** under IRC 403(b)(1) or **custodial account** established under IRC 403(b)(7) that is not subject to ERISA.
3. **A simplified employer pension (SEP) described in IRC 408(k) that conforms to the alternative method of compliance** described in 29 CFR 2520.104-48 or 29 CFR 2520.104-49. A SEP is a pension plan that meets certain minimum qualifications regarding eligibility and employer contributions.
4. **A church plan not electing coverage** under IRC 410(d).
5. **A governmental plan.**

Exhibit 20.1.8-3 (10-06-2022)**EO AND EP REASONABLE CAUSE GUIDELINES**

1. Generally, a relief from penalties is based on a Statutory Exception or an Administrative Waiver for oral advice rather than reasonable cause. Penalties under IRC 6685 and IRC 6711 may not be waived for reasonable cause. IRC 6404(f) provides statutory relief from penalties due to erroneous written advice from the IRS, if specific conditions are met. Examples where a relief may or may not be granted are:
 - a. The return was mailed in time but was returned to the sender due to insufficient postage, incorrect or missing address, etc.
 - b. The return was filed in time but erroneously sent or deposited to the wrong IRS office by the taxpayer.
 - c. Delay or failure to file was due to erroneous information or erroneous written advice given to the taxpayer by an IRS employee.
 - d. Delay was caused by death or serious illness of the taxpayer, or a death or serious illness in his/her immediate family. **In the case of a corporation, estate, trust, etc., the death or illness must have been of an individual (or a member of the individual's immediate family) having sole authority to execute the return.**
 - e. Delay was caused by unavoidable absence of the taxpayer. **In the case of a corporation, estate, trust, etc., the absence must have been of an individual (or a member of the individual's immediate family) having sole authority to execute the return.**
 - f. Delinquency was caused by destruction by fire or other casualty of the taxpayer's place of business or business records.
2. If the organization **is a PRIVATE FOUNDATION**: The organization has 90 days to file and pay after it receives a determination letter from the IRS.
3. See IRM 20.1.1, Introduction and Penalty Relief, for additional discussion of Penalty Relief.

Exhibit 20.1.8-4 (04-26-2018)**Penalty Reference Numbers (PRNs) for EO and EP Penalties**

Below are the PRNs used for EO and EP penalties.

IRC Section	Title	PRN
IRC 527(j)(1)	Failure to Make Timely, Complete, and Correct Disclosure of Expenditures and Contributions	662
IRC 6652(c)(1)(A)	Failure to File Timely, Complete or Correct Return by Exempt Organization or Political Organization	663
IRC 6652(c)(1)(B)(ii)	Failure to Comply with Demand by Managers of any Organization	591
IRC 6652(c)(1)(C)	Failure to Provide Public Inspection of Annual Return or Report	528
IRC 6652(c)(1)(D)	Failure to Provide Public Inspection of Application or Notice	527
IRC 6652(c)(2)(A)	Failure to File Information Return Required by Certain Trusts or Exempt Organizations	658
IRC 6652(c)(2)(B)	Failure to Comply with Demand by Managers of Exempt Organization or Trust	592
IRC 6652(c)(2)(C)(ii)	Failure to File Return for Split-Interest Trust with Excessive Gross Income	589
IRC 6652(c)(3)(A)	Failure to File a Disclosure Required of Tax Exempt Entity	611
IRC 6652(c)(3)(B)(ii)	Failure to Comply with Demand Required of an Entity or Manager	629
IRC 6652(c)(4)	Failure to File Initial Notification	713
IRC 6652(d)(1)	Failure to File Annual Registration Statement by Pension Plan (systemic)	165
IRC 6652(d)(1)	Failure to File Annual Registration Statement by Pension Plan (manual)	583

Exhibit 20.1.8-4 (Cont. 1) (04-26-2018)

Penalty Reference Numbers (PRNs) for EO and EP Penalties

IRC Section	Title	PRN
IRC 6652(d)(2)	Failure to File Notification of a Change of Status by Pension Plan	584
IRC 6652(e)	Failure to File Returns and Reports Relating to Certain Trusts and Annuity Plans (systemic)	167
IRC 6652(e)	Failure to File Returns and Reports Relating to Certain Trusts and Annuity Plans (manual)	552
IRC 6652(h)	Failure to Give Notice to Recipients of Certain Pension, etc., Distributions	585
IRC 6652(i)	Failure to Give Written Explanation to Recipients of Certain Qualifying Rollover Distributions	586
IRC 6652(o)	Failure to Provide Notices with Respect to Qualified Small Employer Health Reimbursement Arrangements	519
IRC 6684	Willful and Flagrant Act by any Person Relating to Private Foundations/Other Tax Exempt Organizations	566
IRC 6685	Willful Failure to File a Return or Application	564
IRC 6690	Fraudulent Statement or Failure to Furnish Statement to Plan Participant	168
IRC 6692	Failure to File Actuarial Report	169
IRC 6693(a)(2)(B)	Failure to File a Report Relating to Archer MSAs	553
IRC 6693(a)(2)(C)	Failure to File a Report Relating to Health Savings Accounts	554
IRC 6693(a)(2)(D)	Failure to File a Report Relating to Qualified Tuition Programs	555
IRC 6693(a)(2)(E)	Failure to File a Report Relating to the ABLE Act as Required by IRC section 529A	568

Exhibit 20.1.8-4 (Cont. 2) (04-26-2018)**Penalty Reference Numbers (PRNs) for EO and EP Penalties**

IRC Section	Title	PRN
IRC 6693(a)(2)(F)	Failure to File a Report Relating to Coverdell Education Savings Accounts	556
IRC 6693(b)(1)	Overstatement of Nondeductible Contributions	557
IRC 6693(b)(2)	Failure to File Form relating to Nondeductible Contributions required under IRC section 408(o)(4)	558
IRC 6693(c)(1)/(c)(2)	Failure to Furnish Certain Information to Participants in SIMPLE Retirement Accounts	573
IRC 6704(b)	Failure to Keep Required Records	639
IRC 6710(a)/(c)	Failure to Disclose Contributions are Nondeductible	647
IRC 6711(b)	Failure to Disclose Availability of Information or Service from Federal Government	567
IRC 6714	Failure to Meet Disclosure Requirements of Quid Pro Quo Contributions	614
IRC 6720	Fraudulent Acknowledgments Regarding Donations of Used Motor Vehicles, Boats, and Airplanes	630